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SUPERIOR COURT
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BY: S. KELBAUGH ✓

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10 **IN THE SUPERIOR COURT**

11 **STATE OF ARIZONA, COUNTY OF YAVAPAI**

12 STATE OF ARIZONA,

P1300CR20081339

13 Plaintiff,

**MOTION TO QUASH SUBPOENAS
DUCES TECUM**

14 vs.

MOTION TO STAY AND PROPOSED ORDER

15 STEVEN CARROLL DeMOCKER,

Division 6

16 Defendant.

(The Honorable Warren Darrow)

17 The State of Arizona, through undersigned counsel, hereby moves to quash Defendant's
18 subpoena duces tecum issued to the Custodian of Records of the Yavapai County Sheriff's
19 Office and the Yavapai County Human Resources Department. The State further moves this
20 Court for an order staying compliance with the subpoena until this Court issues its ruling on the
21 State's Motion to Quash. The reasons in support of this motion are more fully set forth below.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **FACTS:**

3 On July 27, 2010, the defense team served upon the Yavapai County Sheriff's Office a
4 Subpoena *duces tecum*, ordering the Sheriff's Office to provide personnel records for YCSO
5 employees Luis Huante, John T. McDormett and Douglas D. Brown. (See Exhibit A, Subpoena
6 *duces tecum*). A similar subpoena was served on the Yavapai County Human Resources
7 Department.
8

9 **LEGAL ARGUMENT:**

10 ***1. The State has standing to object to the subpoenas duces tecum***

11 The State has standing to request that the Court quash the subpoena *duces tecum* on two
12 grounds: (1) the State is a party to the criminal proceeding and has standing to object to the
13 misuse of the rules and statutes; and (2) the county agency that has been subpoenaed is under the
14 control of the State within the meaning of Rule 15, Ariz. R. Crim. P.
15

16 As the prosecutor in this matter, the State has the right to ensure that the parties comply
17 with the statutes and rules governing the processing of the criminal case. When attorneys for the
18 defendant engage in activities that constitute an end-run around the Rules of Criminal Procedure
19 with respect to discovery, the State has the right to object to such conduct.
20

21 Rule 15 of the Arizona Rules of Criminal Procedure sets out the procedure by which
22 information and evidence relating to the State's case is provided to the defendant. The Rule
23 obligates the State to provide information in the possession or control of the State and all persons
24 who have participated in the investigation or evaluation of the case and who are under the
25 prosecutor's direction or control. Rule 15 states:
26

1 **f. Disclosure by Prosecutor.** The prosecutor's obligation under this rule extends to
2 material and information in the possession or control of any of the following:

3 (1) The prosecutor, or members of the prosecutor's staff, or,

4 (2) Any law enforcement agency which has participated in the investigation of the
5 case and that is under the prosecutor's direction or control, or,

6 (3) Any other person who has participated in the investigation or evaluation of the
7 case and who his under the prosecutor's direction or control.
8

9 The Committee Comment to the 1993 Amendment provides:

10 The 2003 amendment to Rule 15.1(f) is intended to more clearly define the
11 prosecutor's obligation to obtain and disclose material and information to the
12 defense. The prosecutor is deemed responsible for obtaining and disclosing
13 material and information held by state, county, and municipal law enforcement
14 agencies that have participated in the investigation of the case. *See Carpenter v.*
15 *Superior Court in and For County of Maricopa*, 176 Ariz. 486, 862 P.2d 246 (App.
16 1993). The prosecutor is not generally deemed responsible for disclosure of
17 information and material held by federal law enforcement agencies, *See State v.*
18 *Briggs*, 112 Ariz. 379, 542 P.2d 804 (1975), nor crime victims, *see State v. Piper*,
113 Ariz. 390, 555 P.2d 636 (1976), nor other lay witnesses, *see State v. Kevil*, 111
19 Ariz. 240, 527 P.2d 285 (1974). However, the court may order the prosecutor to
20 obtain and disclose information and material covered by Rule 15.1(a) that is not
21 within the state's possession and control if (1) the state has better access to the
22 information; (2) the defense shows that it has made a good faith effort to obtain the
23 information without success; and (3) the information has been specifically
24 requested by the defense.

25 In *State v. Briggs*, 112 Ariz. 379, 383, 542 P.2d 804, 808 (Ariz. 1975), the Arizona
26 Supreme Court interpreted the obligation under Rule 15 as follows: "The prosecution must
provide evidence which is material to either guilt or innocence, or punishment where the
evidence is in possession or control of the prosecutor or members of his staff, or 'of any other
persons who have participated in the investigation or evaluation of the case and who are under
the prosecutor's control.' Rule 15.1(d), Rules of Criminal Procedure."

1 **2. The Defendant Cannot Use the Subpoena Powers of the Court to Circumvent Rule 15.1**

2 Rule 15.1 of the Arizona Rules of Criminal Procedure governs discovery requests in all
3 criminal cases. If a defendant seeks information not disclosed by the State, he must either direct his
4 request to the prosecutor or file a motion with the trial court pursuant to Rule 15.1(g) seeking the
5 additional information. *Carpenter v. Superior Court In and For County of Maricopa*, 176 Ariz. 486,
6 862 P.2d 246 (App. 1993).
7

8 The defendant triggers the criminal discovery process encompassed in Rule 15,
9 however, when he attempts to use the court's subpoena power to order production
10 of materials or information. Once the defendant elects to utilize the court's
11 authority to obtain records, he must do so according to the rules adopted by the
12 Arizona Supreme Court.

13 Petitioners attempted to use the court's authority without complying with the
14 applicable rules of procedure. They did not request that the prosecutor disclose
15 the police reports under Rule 15.1.e; they did not notify the state that they had
16 subpoenaed PPD to disclose the reports. We conclude therefore that the trial
17 court properly quashed petitioner's subpoenas duces tecum.

18 *Id.* at 491, 862 P.2d at 251. *Carpenter* also addresses records that are not specifically under the
19 prosecutor's control. "Under Rule 15.1.e¹, the court can order "any person" to make available
20 needed materials or information, assuming a defendant makes the showing required by the terms
21 of the rule. . . We therefore conclude that, even if the information this defendant sought is not
22 encompassed within the mandatory disclosure provisions of Rule 15, the rules provide an
23 adequate means for obtaining needed information." *Id.* at 490-491, 862 P.2d at 250 – 251.
24 (internal citations omitted).

25 Arizona Revised Statutes § 13-4071 governs the issuance of subpoenas in criminal cases.
26 Section 13-4071(D) provides procedures for a defendant to obtain blank subpoenas for witnesses

¹ This provision is now found in Rule 15.1(g), Ariz. R. Crim. P.

1 required by the defense; however, the statute specifically *prohibits* a defendant from using this
2 provision for discovery in a criminal case. ("Blank subpoenas shall not be used to procure
3 discovery in a criminal case, including access to the records of a victim." A.R.S. § 13-4071(D))

4 It is highly unlikely that the experienced attorneys on the defense team are unaware of these
5 rules; therefore, their attempts to circumvent them should elicit some type of reprimand from this
6 Court. Not only has Defendant failed to comply with any of the formal discovery tools set forth in
7 Rule 15, his actions in obtaining blank subpoenas from the Court in order to acquire personnel
8 records of the officers involved in this matter is in direct violation of A.R.S. § 13-4071(D).

9
10 ***3. Defendant has failed to exercise due diligence in requesting the officers' personnel files.***

11 The State has an affirmative duty to disclose any *Brady* material. There was no such
12 disclosure necessary in this case. As the defense team constantly reminds the State, we are well
13 past the time for further disclosure in this case. If the defense team had reason to believe the
14 officers' personnel files contained any *Brady* or impeachment material, the facts or evidence
15 supporting that belief should have properly presented to the Court long ago. From the timing of
16 this subpoena, it is evident the defense team is on nothing but a blind fishing expedition.

17
18 In *State v. Acinelli*, 191 Ariz. 66, 952 P.2d 304 (App.1997), the Court of Appeals held a
19 defendant must provide more than mere speculation that a government file may contain *Brady*
20 material. "A due process standard which is satisfied by mere speculation would convert *Brady*
21 into a discovery device and impose an undue burden on the district court." *Id.* at 71, 952 P.2d
22 304 at 309 (citations omitted). "Impeachment evidence is relevant and admissible but
23 'materiality' for these purposes is a showing that a personnel file contains material evidence."
24 *Id.*

1 **4. State's Request for Stay**

2 The compliance date set forth by Defendant in the subpoenas *duces tecum* to the Sheriff's
3 Office is August 13, 2010. The Human Resources Department faces a similar deadline. The
4 State therefore requests this Court to stay the compliance with the subpoena *duces tecum* pending
5 a ruling on the State's Motion to Quash. Rule 45(a)(D), Ariz. R. Civ. P., provides that a party
6 who objects to a subpoena does not need to comply with it until a court orders compliance.
7
8 *Stewart v. Superior Court*, 163 Ariz. 227, 231 n.3, 787 P.2d 126, 130 (App. 1989) (noting that
9 "[o]ur supreme court has long held that, in the absence of an applicable criminal rule, criminal
10 courts may look to the civil rules for a definition of their powers, insofar as the rules of civil
11 procedure codify the powers of the court at common law.")

12 **CONCLUSION:**

13 The defense is barred from obtaining the officers' personnel records by subpoena.
14 Accordingly, the subpoenas *duces tecum* served on the Yavapai County Sheriff's Office should
15 be quashed by this Court. Finally, the State requests this Court to stay compliance with any
16 issued subpoenas pending its ruling on the State's Motion to Quash.
17

18 RESPECTFULLY submitted this 3 day of August, 2010.

21 By 
22 Jack H. Fields
23 DEPUTY YAVAPAI COUNTY ATTORNEY

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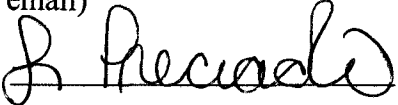
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COPIES of the foregoing delivered this
3 day of August, 2010 to:

Honorable Warren R. Darrow
Division 6
Yavapai County Superior Court
(via email)

John Sears
511 E. Gurley St.
Prescott, AZ 86301
Attorney for Defendant
(via email)

Larry Hammond
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Attorney for Defendant
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By: 

Law Offices of John M. Sears P.C.
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 511 E. Gurley Street
 Prescott, AZ 86301
 (928)778-5208

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 IN AND FOR THE COUNTY OF YAVAPAI**

STATE OF ARIZONA,
Plaintiff,

No. P1300 CR 20081339

**SUBPOENA
 DUCAS TECUM**

vs.

STEVEN C. DEMOCKER,
Defendant.

**Assigned to
 Hon. Warren Darrow
 Div. 6**

**IN THE NAME OF THE STATE OF ARIZONA TO: CUSTODIAN OF RECORDS,
 YAVAPAI COUNTY SHERIFF'S OFFICE, 255 E GURLEY ST, PRESCOTT, AZ**

YOU ARE ORDERED to appear before the Hon. Warren Darrow of Division 6 of the Yavapai County Superior Court, Yavapai County Courthouse, Prescott, AZ and to remain there until excused and to give testimony in the above-entitled matter on:

Date: FRIDAY, AUG 13, 2010 **Time:** 9 AM

YOU ARE FURTHER ORDERED to bring with you:

**ALL DOCUMENTS LISTED ON THE ATTACHMENT REGARDING
 SHERIFF'S EMPLOYEES LUIS HUANTE, JOHN T. MCDERMOTT AND
 DOUGLAS D. BROWN.**

You are urged to verify that your appearance will be needed one business day in advance by contacting defense attorney John Sears at 928-778-5208 or his investigator Rich Robertson at 602-550-7251. Requests for reasonable accommodation for disabilities must be made at least three working days in advance of the scheduled court appearance (per Supreme Court Rule 45)

Failure to obey this subpoena without adequate excuse may be deemed contempt of court.

Given under my hand and seal JUL 27 2010, 2010.

Clerk of the Superior Court

By: [Signature]
 Deputy Clerk

Certificate of Personal Service:

The undersigned served this subpoena by showing the original, informing the witness of the contents, and delivering a copy to the witness.

By: [Signature]

Date/Time: 7/24/10 Place: YCSO

ATTACHMENT TO SUBPOENA DUCES TECUM

For YCSO employees **Luis Huante, John T. McDormett, and Douglas D. Brown**, we are seeking copies of :

1. Annual performance appraisals and ratings since 2005.
2. Documentation of voluntary or involuntary demotions since 2005.
3. Documentation of paid or unpaid suspensions since 2005.
4. Rate-of-pay history since hire date.
5. Records of all personnel actions taken since hire date.
6. All citizen complaints founded and unfounded since 2005.
7. All internal investigations sustained and unstained since hire date.
8. All "work-station notes" or equivalent documents/records created by supervisors regarding the employee performance, since 2005.
9. All correspondence with the employee regarding performance, including any performance counseling memorandums, verbal counseling, written reprimands, or corrective action recommended and/or taken since 2005.

1 Law Offices of John M. Sears P.C.
John M. Sears
2 State Bar N. 005617
511 E. Gurley Street
3 Prescott, AZ 86301
(928)778-5208
4

5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
IN AND FOR THE COUNTY OF YAVAPAI

6 **STATE OF ARIZONA,**
Plaintiff,

No. P1300 CR 20081339

7 **SUBPOENA**
DUCAS TECUM

8 vs.

9 **STEVEN C. DEMOCKER,**
10 **Defendant.**

Assigned to
Hon. Warren Darrow
Div. 6

11 **IN THE NAME OF THE STATE OF ARIZONA TO: CUSTODIAN OF RECORDS,**
12 **YAVAPAI COUNTY HUMAN RESOURCES DEPT, 1015 FAIR ST, PRESCOTT, AZ**

13 **YOU ARE ORDERED** to appear before the Hon. Warren Darrow of Division 6 of the Yavapai
County Superior Court, Yavapai County Courthouse, Prescott, AZ and to remain there until
excused and to give testimony in the above-entitled matter on:

14 **Date:** **FRIDAY, AUG 13, 2010** **Time:** **9 AM**

15 **YOU ARE FURTHER ORDERED** to bring with you:

16 **ALL DOCUMENTS LISTED ON THE ATTACHMENT REGARDING**
17 **SHERIFF'S EMPLOYEES LUIS HUANTE, JOHN T. McDORMETT AND**
DOUGLAS D. BROWN.

18 You are urged to verify that your appearance will be needed one business day in advance by
contacting defense attorney John Sears at 928-778-5208 or his investigator Rich Robertson at
19 602-550-7251. Requests for reasonable accommodation for disabilities must be made at least
three working days in advance of the scheduled court appearance (per Supreme Court Rule 45)

20 **Failure to obey this subpoena without adequate excuse may be deemed contempt of court.**

21 Given under my hand and seal JUL 27 2010, 2010.

Clerk of the Superior Court

22 By: [Signature]

23 Deputy Clerk

24 Certificate of Personal Service:

25 The undersigned served this subpoena by showing the
original, informing the witness of the contents, and
delivering a copy to the witness.

By: [Signature]

Date/Time: 7/29/10 8:35 AM

Place: YAVAPAI COUNTY HUMAN RESOURCES

ATTACHMENT TO SUBPOENA DUCES TECUM

For YCSO employees **Luis Huante, John T. McDormett, and Douglas D. Brown**, we are seeking copies of :

1. Annual performance appraisals and ratings since 2005.
2. Documentation of voluntary or involuntary demotions since 2005.
3. Documentation of paid or unpaid suspensions since 2005.
4. Rate-of-pay history since hire date.
5. Records of all personnel actions taken since hire date.
6. All citizen complaints founded and unfounded since 2005.
7. All internal investigations sustained and unstained since hire date.
8. All "work-station notes" or equivalent documents/records created by supervisors regarding the employee performance, since 2005.
9. All correspondence with the employee regarding performance, including any performance counseling memorandums, verbal counseling, written reprimands, or corrective action recommended and/or taken since 2005.